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Remarks:

Regarding the rejection of claims 1 – 8 under 35 USC 102(b) in view of WO 02/44314:
The applicant respectfully traverses the grounds of rejection raised by the Examiner and requests reconsideration thereof.

In the present paper, the applicant submits new amendments to the independent claim (claim 1) which clearly distinguishes the subject matter of the claim over the compositions of the prior art WO 02/44314 reference. Support for the newly amended claim are found in applicant's specification at Table 7.

The applicant traverses the Examiner's foregoing reasoning in supporting his rejection over the prior art WO 02/44314 reference. With regard to the Examiner's grounds of rejection under 35 USC §102(b), that statute holds in relevant part that a person shall be entitled to a patent unless "the invention was ... in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States." Unpatentability based on "anticipation" requires that the invention is not in fact new. See *Hoover Group, Inc. v. Custom Metalcraft, Inc.*, 66 F.3d 299, 302, 36 USPQ2d 1101, 1103 (Fed. Cir. 1995) ("lack of novelty (often called 'anticipation') requires that the same invention, including each element and limitation of the claims, was known or used by others before it was invented by the patentee"). Anticipation requires that a single reference describe the claimed invention with sufficient precision and detail to establish that the subject matter existed in the prior art. See, *In re Spada*, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990). It is the present applicants' position that this standard has not been met.

As the applicant points out that the *Affidavit of Co-Inventor* clearly demonstrates that the compositions of the WO 02/44314 reference fail to meet the limitations of the currently presented amended claims, and as such, do not "anticipate" the currently claimed invention. Indeed it is quite clear that the prior art compositions of the WO 02/44314 reference required nearly twice the amount of time in order to reach the clarified state

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required of the claims, and thus cannot be fairly stated as anticipating the currently claimed invention.

Accordingly reconsideration of the propriety of the rejection and its withdrawal is solicited.

Should the Examiner in charge of this application believe that telephonic communication with the undersigned would meaningfully advance the prosecution of this application, they are invited to call the undersigned at their earliest convenience.

Early issuance of a *Notice of Allowability* is requested.

PETITION FOR A TWO-MONTH EXTENSION OF TIME

The applicants respectfully petition for a two-month extension of time in order to permit for the timely entry of this response. The Commissioner is hereby authorized to charge the fee to Deposit Account No. 14-1263 with respect to this petition.

CONDITIONAL AUTHORIZATION FOR FEES

Should any further fee be required by the Commissioner in order to permit the timely entry of this paper, the Commissioner is authorized to charge any such fee to Deposit Account No. 14-1263.

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Respectfully Submitted;

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Enclosures – Affidavit of Co-Inventor

Date:

Request for Continued Examination Transmittal

Certification of Telefax Transmission:

I hereby certify that this paper is being telefax transmitted to the US Patent and Trademark Office to telefax number: 571-273-8300 on the date shown below:

Andrew N. Parfomak

Date: